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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 16 2010

DOCKETED BY

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of:

JOSEPH MACK and Helen Marie Mack,
husband and wife, dba Secure Retirement
Solutions,

MACK FINANCIAL GROUP, LLC, an
Arizona limited liability company, and

DARIN WHITTINGTON, CRD #2569037,
and Gina Whittington, husband and wife,

Respondents.

DOCKET NO. S-20768A-10-0463

**ANSWER TO NOTICE OF
OPPORTUNITY FOR HEARING**

Pursuant to A.A.C. R14-4-305, respondents Joseph Mack and Mack Financial Group, LLC, and Respondent Spouse Helen Marie Mack (“Respondents”) for their answer to the Arizona Corporation Commission’s (the “Commission”) Notice of Opportunity for Hearing (the “Notice”), admit, deny and allege as follows:

1. The allegations contained in paragraph 1 of the Notice constitute legal conclusions to which no response is required. To the extent the allegations contained in paragraph 1 of the

1 Notice constitute factual allegations, Respondents deny the same.

2 2. Respondents admit the allegations contained in paragraphs 2-3 of the Notice.

3 3. Respondents are without knowledge or information sufficient to form a belief as to
4 the truth or the falsity of the Commission's allegations in paragraph 4 and therefore deny the
5 same.

6 4. The allegations contained in paragraph 5 of the Notice constitute legal conclusions
7 and instructions for reading the Notice to which no response is required. To the extent the
8 allegations contained in paragraph 5 of the Notice constitute factual allegations, Respondents
9 deny the same.

10 5. In responding to the allegations contained in paragraph 6 of the Notice,
11 Respondents admit that Helen Marie Mack was at all relevant times the spouse of Joseph Mack.
12 Respondents are without knowledge or information sufficient to form a belief as to the truth or
13 the falsity of the Commission's remaining allegations in paragraph 6 and therefore deny the
14 same. To the extent the allegations contained in paragraph 6 of the Notice constitute legal
15 conclusions and instructions for reading the Notice, no response is required.

16 6. Respondents deny the allegations contained in paragraph 7 of the Notice.

17 7. Respondents admit the allegations contained in paragraphs 8 of the Notice.

18 8. In responding to the allegations contained in paragraph 9 of the Notice,
19 Respondents affirmatively allege that Joe Mack hired a third-party advertising company to
20 prepare and mail invitations to insurance and annuity workshops and to select recipients for such
21 mailings. Respondents affirmatively allege that workshops were usually held at restaurants.
22 Respondents affirmatively allege that topic of workshops conducted by Joe Mack was insurance
23 and annuity products unrelated to Oxford or the Forex Investment (as those terms are defined in
24 paragraph 10 of the Notice). Respondents are without knowledge or information sufficient to
25 form a belief as to the truth or the falsity of the Commission's remaining allegations in
26 paragraph 9 and therefore deny the same.

27 9. Respondents deny the allegations contained in paragraph 10 of the Notice.
28 Respondents affirmatively allege that Respondents never presented the Forex Investment to

1 attendees at an insurance and annuity workshop. Respondents further affirmatively allege that if
2 the Forex Investment was discussed at an insurance and annuity workshop sponsored by
3 Respondents, it was done so because workshop attendees either asked about alternatives to
4 annuities and insurance products or representatives of Oxford asked to present at the workshop.

5 10. Respondents deny the allegations contained in paragraphs 11-12 of the Notice. In
6 responding to the allegations contained in paragraphs 11-12 of the Notice, Respondents
7 affirmatively allege that when workshop attendees or pre-existing clients asked about fixed-
8 income alternatives or the Forex Investment specifically, Respondents referred them to an
9 authorized representative of Oxford. Respondents affirmatively allege that Respondents did not
10 draft, consult in drafting, prepare or assist in preparing any documents describing or relating to
11 Oxford or the Forex Investment.

12 11. Respondents are without knowledge or information sufficient to form a belief as to
13 the truth or the falsity of the Commission's allegations in paragraph 13 and therefore deny the
14 same.

15 12. Respondents deny the allegations contained in paragraphs 14 of the Notice.

16 13. Respondents deny the allegations contained in paragraphs 15 of the Notice.

17 14. In responding to the allegations contained in paragraph 16 of the Notice,
18 Respondents affirmatively allege that Joe Mack invested \$350,000.00 of his family's money in
19 the Forex Investment. Respondents deny the remaining allegations contained in paragraph 16 of
20 the Notice.

21 15. In responding to the allegations contained in paragraph 17 of the Notice,
22 Respondents affirmatively allege that when workshop attendees or pre-existing clients asked
23 about fixed-income alternatives, Respondents generally informed them about different options,
24 most of which were unrelated to Oxford, and referred some workshop attendees and pre-existing
25 clients to an authorized representative of Oxford for information about the Forex Investment.
26 Respondents deny the remaining allegations contained in paragraph 17 of the Notice.

27 16. Respondents are without knowledge or information sufficient to form a belief as
28 to the truth or the falsity of the Commission's allegations in paragraph 18 and therefore deny the

1 same. Respondents affirmatively allege that Respondents are not a party to, or otherwise named
2 in, any management agreement or customer trading agreement and, upon information and belief,
3 such management and customer trading agreements are between Forex Investors and Oxford
4 directly.

5 17. In responding to the allegations contained in paragraph 19 of the Notice,
6 Respondents affirmatively allege that Joe Mack maintains information on pre-existing clients as
7 a professional courtesy and included information on investments in the Forex investment when
8 the same was provided to Joe Mack by Oxford. Respondents deny the remaining allegations
9 contained in paragraph 19 of the Notice.

10 18. In responding to the allegations contained in paragraph 20 of the Notice,
11 Respondents affirmatively allege that Respondents received a finder's fee for referring
12 individuals to Oxford. Respondents further affirmatively allege that Oxford deposited finder's
13 fees directly in Joe Mack's bank account. Respondents further affirmatively allege that Joe
14 Mack transferred a portion of the finder's fees to Respondent Darin Whittington for joint clients
15 of Darin Whittington and Joe Mack. Respondents deny the remaining allegations contained in
16 paragraph 20 of the Notice.

17 19. In responding to the allegations contained in paragraph 21 of the Notice,
18 Respondents affirmatively allege that upon information and belief, the finder's fees paid by
19 Oxford were approximately 2-3 percent of the amount invested. Respondents deny the
20 remaining allegations contained in paragraph 21 of the Notice.

21 20. Respondents are without knowledge or information sufficient to form a belief as to
22 the truth or the falsity of the Commission's allegations in paragraph 22 and therefore deny the
23 same.

24 21. Respondents deny the allegations contained in paragraph 23 of the Notice.

25 22. Respondents admit the allegations contained in paragraph 24 of the Notice.

26 23. Respondents are without knowledge or information sufficient to form a belief as to
27 the truth or the falsity of the Commission's allegations in paragraphs 25-27 and therefore deny
28 the same.

24. Respondents deny the allegations contained in paragraph 28 of the Notice.

25. Respondents are without knowledge or information sufficient to form a belief as to the truth or the falsity of the Commission's allegations in paragraph 29 and therefore deny the same.

26. The allegations contained in paragraph 30 of the Notice constitute legal conclusions to which no response is required. To the extent the allegations contained in paragraph 30 of the Notice constitute factual allegations, Respondents deny the same.

27. Respondents deny the allegations contained in paragraph 31 of the Notice.

28. Respondents are without knowledge or information sufficient to form a belief as to the truth or the falsity of the Commission's allegations in paragraph 32 and therefore deny the same.

29. The allegations contained in paragraph 33 of the Notice constitute legal conclusions to which no response is required. To the extent the allegations contained in paragraph 33 of the Notice constitute factual allegations, Respondents deny the same.

30. Respondents are without knowledge or information sufficient to form a belief as to the truth or the falsity of the Commission's allegations in paragraphs 34-35 and therefore deny the same.

AFFIRMATIVE DEFENSES

31. Respondents affirmatively allege that that they did not cause any of the losses or damages, if any, complained of by investors in the Forex Investment. Investors losses or damages, if any, were caused by the acts or omissions of Trevor Cook a Minnesota resident, Bo Beckman, a Minnesota resident, Oxford Global Advisors, a Minnesota business entity, Oxford Private Client Group, a Minnesota business entity, and the officers, directors, agents, subsidiaries and/or affiliates of such persons. (collectively, the "Oxford Parties").

32. Respondents affirmatively allege that the Oxford Parties are necessary and indispensable parties to this proceeding. The failure to include the Oxford Parties as defendants prevents the Commission from according complete relief among those already parties. The failure to include the Oxford Parties leaves all Respondents named in the Notice subject to a

1 substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of
2 the claimed interest. Respondents reserve the right to move for the dismissal of this action for
3 failure to join necessary and indispensable parties.

4 33. Respondents affirmatively allege that they did not sell the Forex Investment or
5 offer it for sale to any investors, workshop attendees or pre-existing clients and if the Forex
6 Investment was sold to such persons, it was sold exclusively by one or more of the Oxford
7 Parties and not Respondents.

8 34. Respondents affirmatively allege that the "Forex investment" referenced in
9 paragraph 10 of the Notice is not a security under Arizona law.

10 35. Respondents affirmatively allege that if any security was sold by the Oxford
11 parties, such security is exempt from registration under the laws of the State of Arizona and of
12 the United States.

13 36. Respondents affirmatively allege that this action is barred by the applicable statute
14 of limitations.

15 37. Respondents affirmatively allege that the Commission has failed to plead a
16 necessary offset, namely Joe Mack's family investment in the Forex Investment in the amount
17 of \$350,000.00 for which the Commission must protect Respondents as Arizona investors
18 damaged by Oxford.

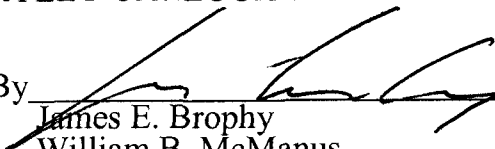
19 38. Respondents reserve the right to raise any affirmative defenses that are applicable
20 and may become apparent during the discovery phase of this matter.

21 39. Respondents hereby renew their request to a hearing on the allegations contained
22 in the Notice separate and apart from other Respondents named in this matter.

23 DATED this 16th day of December, 2010.

24 RYLEY CARLOCK & APPLEWHITE

25 By

26 
James E. Brophy

William B. McManus

27 Kevin R. Heaphy

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28 Phoenix, Arizona 85004-4417

Attorneys for Respondents

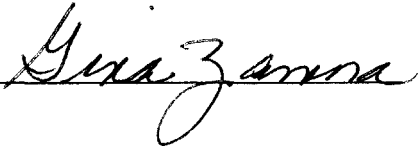
1 **ORIGINAL** of the foregoing filed
2 this 16th day of December, 2010 to:

3 Arizona Corporation Commission
4 Docket Control
5 1200 W. Washington
6 Phoenix, Arizona 85007

7 **COPY** of the foregoing *via* US Mail
8 this 16th day of December, 2010 to:

9 Wendy Coy
10 Arizona Corporation Commission
11 1300 W. Washington, 3rd Floor
12 Phoenix, Arizona 85007

13 By

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